IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7865 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMBAUG CO OPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7865 of 1997
   MRS KETTY A MEHTA for Petitioner No. 1
   MR SP SEN AGP for Respondent No. 1-2,4-5
   NOTICE SERVED BY DS for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/07/2001

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is a Cooperative Housing Society. The petitioner challenges the order dated 24th February, 1993 made by the State Government [Chief Secretary, Revenue Department] in exercise of power under section 34 of the Urban Land [Ceiling & Regulation] Act, 1976 [hereinafter referred to as, `the Act'].

It appears that the petitioner had in the year 1972 agreed to purchase land, survey no. 130, situated at village Phoolpada, Taluka-Chaurasi, District Surat from one Natvarlal Ramjibhai Mali. The said Natvarlal failed to honour the said agreement. The petitioner, therefore, instituted Special Civil Suit No. 122 of 1975 for specific performance. The said suit was decreed on 14th February, 1979. In satisfaction of the decree, the sale deed was executed on 19th March, 1979. Since then, the members of the petitioner-Society entered into the said land, survey no. 130 and after seeking permission from the Municipal Corporation, constructed their houses. The houses having been constructed, without obtaining permission under section 65 of the Bombay Land Revenue Code, under order dated 18th March, 1982, made by the Collector, Surat, the said construction was regularized on payment of fine, as determined in the said order. It is the case of the petitioner that since then, the members of the petitioner-Society have been residing in the said houses. The name of the society has also been entered in the revenue record since the year 1979. On introduction of the Act, the said Natvarlal Ramjibhai made a declaration of his holding under section 6 [1] of the Act. The above referred land, survey no. 130 was also declared as his holding and the fact of pending litigation was also mentioned. After the transfer of theland to the petitioner, the petitioner participated in the proceeding under the Act. The competent authority under its order dated 25th January, 1988 recorded the factum of the sale of the land, survey no. 130/1 [paiki] admeasuring 10,931.18 sq.m. to the petitioner and also the construction made thereon. The competent authority held that the said Natvarlal Ramjibhai did not hold the land in excess of the ceiling limit. The order of the competent authority was taken into review by the State Government in exercise of power conferred upon it under section 34 of the Act. The State Government was of the view that the sale of the said land made to the petitioner being subsequent to the date of introduction of the Act, could not have been recognized and the said land ought to have been considered as `the vacant land' in the hands of the said Natvarlal Ramjibhai. Eventually, the State Government held that the said

Natvarlal Ramjibhai held vacant land admeasuring 7,098.76 sq.mts. in excess of the ceiling limit and set-aside the order of the competent authority made on 25th January, 1988. Feeling aggrieved, the petitioner has preferred the present petition.

Mrs. Mehta has submitted that the petitioner had agreed to purchase the said land in the year 1972 and had, pursuant to the decree of the Court of Competent jurisdiction, purchased the land in question in the year 1979. The members of the petitioner-Society had constructed their houses after obtaining proper sanction from the Municipal Corporation. The competent authority had under its order dated 25th January, 1988, considered the said facts. Though the State Government was alive to the said facts, the State Government did not issue notice to the petitioner nor was the petitioner afforded an opportunity of representation/hearing. Further, pursuant to the impugned order dated 24th February, 1993, the State Government had issued Notification under section 10 (3) of the Act vesting the said land in the State Government and had also issued notice under section 10 (5) of the Act. The said Notification was issued in the name of the former owner Natvarlal Ramjibhai Mali and the notice under section 10 (5) of the Act also was given to said Shri Natvarlal Ramjibhai. The possession is alleged to have been taken over in presence of panchas, without issuing notice either to the petitioner or to any of its members. The members of the petitioner Society are still living in the houses constructed by them on the said land. The possession alleged to have been taken by the State Government on 2nd November, 1996 is in reality a paper possession. She has, therefore, submitted that the impugned order, having been made in violation of principles of natural justice and the proviso to section 34 of the Act, requires to be quashed and set-aside and the subsequent proceedings shall also stand vitiated.

In answer to the petition, Mr. Sen has submitted that the petitioner had purchased the said land in the year 1979 ie., long after introduction of the Act. In view of Section 15 of the Act, the petitioner was required to make declaration under section 6 (1) of the Act. The petitioner having failed to make declaration, as envisaged under section 6 (1) of the Act, the petitioner was not required to be heard in the proceedings under section 34 of the Act. The petitioner was also not required to be given notice under section 10 (5) of the Act nor the possession was required to be obtained from the petitioner or its members.

It is an undisputed fact that the name of the petitioner-Society has been entered in the revenue record in the year 1979 and since then, the petitioner's name continues in the revenue record. The fact of the petitioner having purchased the land in the year 1979, pursuant to the decree of the Civil Court and that the constructions were made by its members were known to the State Government. The petitioner, thus, was an affected person and ought to have been heard by the State Government in the proceeding initiated under section 34 of the Act. This, admittedly, having not been done, the order is vitiated. The possession of the vacant land alleged to have been taken over on 2nd November, 1996 also is a paper possession and actual possession has admittedly remained with the petitioner society and its members. Hence, in my view, the impugned order of the State Government made in Revision under section 34 of the Act is a nullity and the consequent proceedings taken under section 10 of the Act are vitiated.

In the result, the petition is allowed. The impugned order of the State Government dated 24th February, 1993 [Annexure-F to the petition] is quashed and set-aside. The consequential order dated 20th April, 1993 made by the competent authority [Annexure-G to the petition] and the proceedings under section 10 of the Act are also quashed and set aside. Rule is made absolute with costs. Ad-interim relief is vacated.

[Ms. R.M Doshit, J.]

Prakash*